
**UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

NAVAJO NATION HUMAN RIGHTS
COMMISSION; PEGGY PHILLIPS; MARK
MARYBOY; WILFRED JONES; TERRY
WHITEHAT; WILLIE SKOW; and MABEL
SKOW,

Plaintiffs,

v.

SAN JUAN COUNTY; JOHN DAVID
NIELSON, in his official capacity as San Juan
County Clerk; and PHIL LYMAN, BRUCE
ADAMS, and REBECCA BENALLY, in their
official capacities as San Juan County
Commissioners,

Defendants.

**REVISED STIPULATED
SETTLEMENT**

Case No. 2:16-cv-00154 JNP

Judge Jill N. Parrish

A Stipulated Settlement Agreement was negotiated and agreed upon by the parties, which was executed on the 22nd day of February, 2018, and subsequently approved by the Court. That *Stipulated Settlement Agreement* was effective through the 2020 election after which the parties were to meet and, in good faith, review the data collected from each election and determine whether the terms of the *Stipulated Settlement Agreement* should be continued and, if so, in what fashion.

Representatives for the parties including Leonard Gorman, Executive Director of Navajo Human Rights Commission on behalf of the plaintiffs, which no longer include Ms. Betty Billie Farley who has passed away, and the San Juan County Clerk Auditor John David Nielson and the San Juan County Attorney, Kendall G. Laws, on behalf of the defendants have met and

conferred in good faith, and a revision of the *Stipulated Settlement Agreement* has been agreed upon by the parties. The terms of the *Revised Settlement Agreement* are stated below.

A. Language Assistance Locations, In-Person Voter Assistance and Polling

Places:

The Clerk Auditor shall:

1. Continue through the 2024 election to open three primary and general election-day Language Assistance Locations and polling places, located on or within the Navajo Nation.

- a. The locations of the three Language Assistance Locations and polling places (which shall be at the same locations) shall be at Montezuma Creek, Navajo Mountain, and Monument Valley Welcome Center, Utah. There may also be additional locations upon agreement of the parties.
- b. Upon agreement of the parties, the locations of the three Language Assistance Locations and polling places may be changed. If so, then the parties will attempt to locate Language Assistance Locations at Navajo Nation polling places when state, federal, and county elections fall on the same day as Navajo Nation elections.

2. The Language Assistance Locations will also be used as satellite offices for in-person voter assistance during the 28-days (four weeks) preceding each primary and general election. To the extent possible, these satellite offices should be located at the same locations as the Language Assistance Locations that will be polling locations for Election Day voting. In-person voter assistance shall include voter registration, and assistance with the ballot including language assistance.

- a. Each location will be open at least four (4) hours for one day per week in the four weeks preceding each election.
- b. The locations will be staffed by a County employee trained on election procedures and a Navajo interpreter who is trained pursuant to paragraph 9 below who can also be the San Juan County Navajo Liaison.
- c. Completion of proper registration forms or in-person early voting at each site shall be deemed the equivalent to filing them with the County Clerk

Auditor's office for purposes of the deadline that registration closes.

- d. Assistance with the ballot shall include, but is not limited to, providing any County-prepared, non-partisan information to voters about initiatives and propositions and any candidate information supplied by the County.
- e. The voter assistance offices will allow voters to submit a completed ballot into a locked ballot box, the ability to request a replacement ballot if necessary and, if it is adopted by the Clerk Auditor, early in-person voting.
- f. It is understood and agreed that representatives of the Navajo Nation Human Rights Commission and the Clerk Auditor will meet in advance of each election cycle to discuss and agree upon the locations of the three Language Assistance Locations to be established pursuant to this Part A and hours of operation in order to better assist voters and budget for the same. It is also understood that if the parties cannot agree upon these matters the Clerk Auditor has the discretion to establish the locations of the three Language Assistance Locations and their hours of operation.

B. Navajo Liaison Duties and Language Assistance:

San Juan County and the County Clerk Auditor shall:

3. Continue to employ a Navajo Liaison during the six-month period leading up to any election who shall focus his or her efforts upon educating Navajo voters about voting-related issues such as: voter registration; Language Assistance Locations and hours of operation; voter registration instructions and deadlines; filing requirements for local offices and deadlines; ballots, mail-in ballots including instructions and deadlines, and early-voting information.

- a. If the Navajo Liaison position becomes vacant, San Juan County will notify the Navajo Utah Commission, Navajo Human Rights Commission and the Utah Chapter Presidents of the vacancy so that they can encourage members to apply for the position.
- b. If the Navajo Liaison is not acting as interpreter, employ a certified Navajo language interpreter to, among other things, assist and train the Navajo Liaison with ensuring appropriate interpretation of election-related materials.

4. Ensure that each Language Assistance Location serving as an election-day polling place and as an early voting location has at least one individual designated and qualified to

provide Navajo language assistance.

5. Beginning 30 days prior to every primary and general election, place radio ads in the Navajo language providing election-related information on KNDN Radio 960 AM and KTNN AM, which ads will air twice weekly. It is also understood and agreed that NNHRC will review for accuracy and approve in writing the content of these radio ads.

6. Ensure that the Navajo Liaison and any Navajo interpreters comply with all duties listed below.

7. Appropriate funds adequate to ensure that each respective county official or agent undertaking any duty listed herein (including the office of the County Clerk, the Navajo Liaison and any interpreters as part of the language assistance program) can fully carry out those duties.

8. Establish a training program for poll officials and all other San Juan County officials involved in the electoral process with respect to the Voting Rights Act, voting requirements, registration requirements and all other relevant voting procedures with an emphasis on how to render effective assistance to Navajo voters.

C. The Navajo Interpreter:

9. The Navajo Nation Human Rights Commission shall obtain from the Navajo Utah Commission and Navajo Nation Election Administration the names of five (5) individuals that the Navajo Utah Commission and Navajo Nation Election Administration consider to be competent to train Navajo interpreters and provide those names to the Clerk Auditor who, subject to verification of their qualifications and the compensation demanded, will endeavor to select or hire one or more persons from that list. The person or persons so hired will train other Navajo interpreters to provide language assistance at the Language Assistance Locations within the Navajo Nation.

- a. Subject to the limitations placed upon the dissemination of election-related materials by federal and state law, those persons hired and trained as a Navajo interpreter shall translate from English into Navajo the following information: Language Assistance Locations and hours of operation; voter registration instructions and deadlines; filing requirements for local offices and deadlines; ballot information, mail-in ballot instructions and deadlines, and early-voting information. These translations shall be provided in audio form with that audiotape being placed on San Juan County's website and copies will also be provided by the Clerk Auditor to each Navajo Utah Chapter House, the Navajo Utah Commission, the Navajo Human Rights Commission, and the Navajo Nation Election Administration.
- b. Within four business days of receipt of the audiotapes referenced in paragraph 9.a. above, the Navajo Nation Human Rights Commission shall notify the Clerk Auditor, in writing, as to any inaccuracies in the translations or lack of clarity. If no such requests to correct or clarify the audiotapes is received from these recipients, the Clerk Auditor shall proceed with distributing and/or publishing the recordings in accordance with paragraphs 5, 9 and 11 herein.
- c. Once the ballot is available for distribution to voters, one of the persons hired and trained as a Navajo interpreter shall record in the Navajo language an audiotape describing the ballot which recording shall be placed on San Juan County's website, with copies distributed to the Navajo Utah Commission, Navajo Nation Human Rights Commission, Navajo Nation Election Administration, and each Utah Navajo Chapter in the State of Utah, 28 days in advance of election days and be made available at Language Assistance Locations on election days and at any early voting locations.
- d. Within four business days of receipt of the audiotapes referenced in paragraph 9.c. above, the Navajo Nation Human Rights Commission shall notify the Clerk Auditor, in writing, as to any inaccuracies in the translations or lack of clarity. If no requests to correct or clarify the audiotapes is received from these recipients, the Clerk Auditor shall proceed with distributing and/or publishing the recordings in accordance with paragraph 9 herein.
- e. One or more of the persons hired and trained as a Navajo interpreter shall record radio ads in the Navajo language regarding voter registration, Language Assistance Locations and hours of operation, voter registration instructions and deadlines, ballot information, instructions and deadlines for mail-in ballots, and/or early-voting information, which ads, once approved by the Navajo Human Rights Commission, shall be aired on KNDN and KTNN in accordance with paragraph 5 above.

D. The Clerk Auditor Shall:

10. Oversee publication of all registration deadlines, notification of the establishment of all Language Assistance Locations, and notification of all other relevant election-related deadlines, including candidate filing deadlines, as follows:

- a. At least twice a week during the 30-day period preceding each election registration deadline and each election day, place radio ads on KNDN and KTNN as described in paragraph 5 above.
- b. At least three times during the 30-day period prior to each election-related deadline, publish this information in the *Navajo Times* and *San Juan Record*.
- c. Create a flyer in English containing the same information as the newspaper ads and provide a copy of that flyer to all Navajo Chapter Houses located in the State of Utah.
- d. Post this information in English on San Juan County's website, Facebook, and other social media the County may use from time to time during the 60 days prior to the election.
- e. With respect to Navajo Chapter House meetings on the Utah portion of the Navajo Nation, at least one time prior to each election announce in person at the chapter meeting election-related deadlines.

11. Prior to each election, arrange for the Navajo Liaison and, if necessary an interpreter, to attend Navajo Chapter House meetings on the Utah portion of the Navajo Nation a minimum of three times for each Chapter to educate voters about: voter registration, Language Assistance Locations and hours of operation, voter registration instructions and deadlines, filing requirements and filing deadlines for local offices, ballot information, instructions and deadlines for mail-in ballots, and/or early-voting information.

E. Data Collection:

12. Until the 2024 election cycle is concluded, the Clerk Auditor shall maintain "Poll Pads" (iPads) or similar electronic equipment capable of keeping track of and/or recording the

names of the voters, location, date and time at each Language Assistance Location established pursuant to paragraph 2 above; preserve the provisional ballots cast and voter registration forms for each of these locations; and record and maintain on forms provided by the Navajo Nation Human Rights Commission the number of persons who sought language assistance, the date and Language Assistance Location where that assistance was provided, and the names of the Navajo interpreters who provided language assistance at that Language Assistance Location.

13. Upon request, and at a reasonable time and place, the Clerk Auditor will make the records maintained and/or data collected pursuant to paragraph 12 above available to Plaintiffs' counsel for inspection and copying.

F. Adjustments Due to Unforeseen Circumstances:

14. In the event that circumstances beyond the control of the parties may substantially interfere with the ability to comply with procedures mandated hereby, the parties undertake and agree that, upon written notice of the circumstances and the way in which they will preclude compliance with terms hereof, they will cooperate in good faith and in a timely way to consider and adopt temporary adjustments to the procedures mandated that will reasonably meet the objectives of the terms hereof in the face of such circumstances. If such circumstances arise when advance consultation with the Navajo Nation Human Rights Commission is not possible because of time constraints, or if an agreement has not been reached when action is required to be taken, the Clerk Auditor is authorized to make such good faith adjustments as are reasonably possible under the circumstances and notify the Navajo Nation Human Rights Commission of the adjustments and, to the extent necessary, the circumstances that made them necessary.

G. Applicable Time Period and Review:

15. The procedures and services detailed above shall be in place through the 2024

general election, at which time the parties agree to again meet, in good faith, through designated representatives within 60 days to determine whether the terms and provisions of this *Revised Settlement Agreement* shall be continued.

16. The District Court shall retain jurisdiction over this *Revised Settlement Agreement* which shall be in effect until the 2024 election at which time it shall automatically terminate. If the parties cannot agree on whether any term of this *Revised Settlement Agreement* shall be continued, altered, reduced or increased they shall submit their dispute to the Court for resolution.

H. Attorneys' Fees:

17. The parties shall each bear their own costs and attorneys' fees both in the negotiation and preparation of this *Revised Settlement Agreement*, including any subsequent action or proceeding to enforce, reduce, increase or modify the *Revised Settlement Agreement*.

I. No Admission of Liability:

18. It is further stipulated, understood and agreed that this settlement is a compromise of a disputed claim and, therefore, is not to be considered or construed as an admission of liability on the part of San Juan County or the Clerk Auditor.

J. Warranty:

19. The undersigned counsel warrant and represent that they are each authorized to execute this *Revised Settlement Agreement* on behalf of their respective clients who shall be bound hereby as though having signed this *Agreement* themselves.

K. Parties to Revised Settlement Agreement:

20. It is expressly understood and agreed that the parties to this *Revised Settlement Agreement* are the Navajo Nation Human Rights Commission, the San Juan County Clerk

Auditor, in his official capacity, and San Juan County, Utah; that only the Navajo Nation Human Rights Commission, the San Juan County Clerk Auditor, in his or her official capacity, and/or San Juan County, Utah have standing to enforce the terms of this *Revised Settlement Agreement*; and that this *Revised Settlement Agreement* shall supersede and replace the original *Stipulated Settlement Agreement*, which is now void.

WHEREFORE, the undersigned counsel hereby jointly move the Court to incorporate the terms of this *Revised Settlement Agreement* into its original *Order of Dismissal*, and to retain jurisdiction over this matter in order to enforce the terms of the *Revised Settlement Agreement*.

Dated this 2nd day of April, 2021.

**AMERICAN CIVIL LIBERTIES
UNION OF UTAH**

/s/ John Mejia
John Mejia
Leah Farrell
Attorneys for Plaintiffs

SUITTER AXLAND, PLLC

/s/ Carl F. Huefner
Carl F. Huefner
Jesse C. Trentadue

SAN JUAN COUNTY ATTORNEY

/s/ Kendall Laws
Kendall Laws

Attorneys for Defendants